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17 Turnberry/MGM Grand Towers, LLC,  
18 MGM Grand, Inc., Turnberry/Harmon  
19 Ave, LLC, and Turnberry Associates

20 UNITED STATES DISTRICT COURT

21 DISTRICT OF NEVADA

22 MARY ANN SUSSEX; MITCHELL PAE; ) Case No:  
23 MALCOLM NICHOLL and SANDY )  
24 SCALISE; ERNESTO VALDEZ, SR. and )  
25 ERNESTO VALDEZ, JR; JOHN )  
HANSON and ELIZABETH HANSON, ) NOTICE OF REMOVAL

26 Plaintiffs,

27 v.

28 TURNBERRY/MGM GRAND TOWERS, )  
LLC; MGM GRAND, INC., doing )  
business as MGM MIRAGE; )  
TURNBERRY/HARMON AVE., LLC; )  
TURNBERRY ASSOCIATES; and DOES )  
1 through 100, inclusive,

29 Defendants.

1 TO: Mary Ann Sussex; Mitchell Pae; Malcolm Nicholl and Sandy Scalise;  
 2 Ernesto Valdez, Sr and Ernesto Valdez, Jr.; John Hanson and  
 Elizabeth Hanson, and

3 TO: Robert B. Gerard and Ricardo Ehmann of GERARD & ASSOCIATES,  
 4 and Norman Blumenthal of BLUMENTHAL & NORDREHAUG,  
 their attorneys.

5 PLEASE TAKE NOTICE that defendant Turnberry/MGM Grand  
 6 Towers, LLC ("Turnberry/MGM") hereby removes the state action entitled "Mary  
 7 Ann Sussex; Mitchell Pae; Malcolm Nicholl and Sandy Scalise; Ernesto Valdez, Sr  
 and Ernesto Valdez, Jr.; John Hanson and Elizabeth Hanson v. Turnberry/MGM  
 9 Grand Towers, LLC; MGM Grand, Inc., doing business as MGM Mirage;  
 10 Turnberry/Harmon Ave., LLC; Turnberry Associates; and Does 1 through 100,  
 11 Inclusive," Case No. A557730, filed in the Eighth Judicial District Court for the  
 12 State of Nevada in and for the County of Clark, to this Court. The grounds for  
 13 removal are:

14 1. Plaintiffs Mary Ann Sussex, Mitchell Pae, Malcolm Nicholl,  
 15 Sandy Scalise, Ernesto Valdez, Sr., Ernesto Valdez, Jr., John Hanson, and  
 16 Elizabeth Hanson ("Plaintiffs") filed a First Amended Class Action Complaint  
 17 ("CA Compl.") on behalf of "hundreds of Class Members." CA Compl., Exhibit A  
 18 hereto, ¶ 33.<sup>1</sup> Plaintiffs allege they were fraudulently induced into purchasing  
 19 the "air rights" to condominium-hotel room units "as investment securities at the  
 20 Signature," *id.*, ¶ 1, a high-rise condominium hotel located on the MGM Grand  
 21 Hotel Casino property. There are over 1700 hotel condominium units at  
 22 Signature. Plaintiffs seek, *inter alia*, damages, rescission of the purchase and sale  
 23 agreements they signed and restitution of the "consideration paid" they paid for  
 24 the hotel-condominium units, including "all expenses incurred, costs, and  
 25 reasonable attorneys fees." *Id.*, at 32.

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<sup>1</sup> Defendants have not been served with any other class action complaints.  
 Plaintiffs' original complaint was not filed as a class action. See Exhibit E.

1                   2. This Court has original jurisdiction over this alleged class  
 2 action under 28 U.S.C. § 1332(d), the Class Action Fairness Act of 2005 ("CAFA"),  
 3 because: (a) the number of plaintiffs in the putative class is more than 100; (b) the  
 4 matter in controversy exceeds \$5,000,000; (c) there is minimal diversity between  
 5 Plaintiffs and Defendants; and (d) none of the Defendants are States, State  
 6 officials, or governmental entities. *Serano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021  
 7 (9th Cir. 2007).

8                   a. At least one plaintiff is diverse from one defendant, as  
 9 required under 28 U.S.C. § 1332(d)(2)(A). For example, plaintiffs allege that  
 10 Malcom J. Nichol and Sandy Scalise are citizens of California, and that plaintiff  
 11 Mitchell Pae is a resident of Virginia. CA Compl., ¶¶ 16-17. Defendant  
 12 Turnberry/MGM Grand Towers, LLC is a Nevada corporation with its principal  
 13 place of business in Nevada.<sup>2</sup>

14                   b. Plaintiffs estimate that there are "hundreds of Class  
 15 members, geographically spread out throughout the United States. . ." *Id.*, ¶ 34  
 16 (a). The proposed class consists of Plaintiffs and all individuals who purchased  
 17 one or more of the hotel condominium units in the Signature project. *See id.*, ¶ 33.  
 18 Plaintiffs seek to certify a class under Nevada Rule of Civil Procedure 23, which  
 19 is the state equivalent of Federal Rule of Civil Procedure 23.<sup>3</sup>

20                   c. The matter in controversy well exceeds the value of  
 21 \$5,000,000 because the estimated hundreds of Class Plaintiffs seek damages "in  
 22 excess of \$50,000 *per plaintiff*." CA Compl., at 2 (Caption) (emphasis added).  
 23 Plaintiffs seek to recoup the purchase price of their condominium units — each  
 24 ranging between \$400,000 and \$900,000 — plus any expenses paid as a result of  
 25 ownership, less any income received by Plaintiffs who currently own the

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27                   <sup>2</sup> MGM Grand, Inc. and Turnberry Associates are not entities under the  
 28 laws of the state of Nevada or any other state.

3 Defendants do not acknowledge that Plaintiffs have properly pled a class  
 action complaint or that the action is properly maintained as a class action.

1 property. *Id.*, ¶ 41. In addition, Plaintiffs seek civil penalties under NRS 90.640  
2 "of not more than \$2,500 for a single violation or \$100,000 for multiple violations,  
3 *id.*, ¶¶ 41-43, and punitive damages, *id.*, ¶ 68.

6           3.     This Court has jurisdiction over this action under 28 U.S.C. §§  
7     1332(d), 1453(b), 1441(a), and 1446.

8                  4.         Venue is appropriate in the unofficial Southern Division of  
9 this Court under 28 U.S.C. §§ 1391(b), 1441(a), and 1446(a), and LR IA 6-1. This  
10 action was originally filed in the Eighth Judicial District Court for the State of  
11 Nevada, Clark County.

12                   5. Defendants were served with a copy of the complaint on May,  
13 14, 2008. *See* Exhibits B, C, and D hereto. This Notice is therefore timely filed  
14 within thirty days of service, as required by 28 U.S.C. §§ 1446(b).

15                   6. Turnberry/MGM removes this action under 28 U.S.C. §  
16 1453(b), which provides that class actions may be removed by any defendant,  
17 without the consent of all other defendants, and irrespective of whether any  
18 defendant is a citizen of Nevada.

19                   7. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings  
20 and orders served on Defendants are attached hereto as follows:

- a. First Amended Class Action Complaint, attached hereto at Exhibit A;
- b. Summons Turnberry/MGM Grand Towers, LLC, attached hereto as Exhibit B;
- c. Summons Turnberry/Harmon Ave., LLC, attached hereto as Exhibit C;
- d. Summons MGM Mirage, attached hereto as Exhibit D.
- e. Complaint, attached hereto as Exhibit E;

- f. First Amendment to Complaint to Substitute True Names for Fictitious Names, attached hereto as Exhibit F;
- g. Summons Turnberry Associates, attached hereto as Exhibit G; and
- h. Motion to Stay, attached hereto as Exhibit H.

7                   8. Concurrently with filing this notice, a copy of this Notice is  
8 being filed with the clerk of the Eighth Judicial District Court and served on  
9 Plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d).

## MORRIS PICKERING & PETERSON

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Turnberry/Harmon Ave, LLC and  
Turnberry Associates

## CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada  
Electronic Filing Procedures, I certify that I am an employee of MORRIS  
PICKERING & PETERSON, and that the following documents were served via  
electronic service: **NOTICE OF REMOVAL**

TO:

NA

I further certify that I am familiar with the firm's practice of collection and processing documents for mailing; that in accordance therewith, I caused the above-named document to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below:

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Attorney for Plaintiffs

DATED this 13th day of June, 2008.

June, 2000.  
By John F. Morris  
MORRIS PICKERING & PETERSON